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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,725	12/10/2004	Franck Det	OT-5076	6049

7590

04/05/2006

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EXAMINER
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PICO, ERIC E

ART UNIT	PAPER NUMBER
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3654

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/517,725	DET ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eric Pico	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-6 is/are pending in the application.
- 4a) Of the above claim(s) 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Regarding claim 5, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim(s) 1, 2, 4, and 5 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunito JP Patent No. 06-032555 in view of Roose U.S. Patent No. 5170746.

5. **Regarding claim 1**, Kunito discloses a safety top balustrade for a car of a machine room-less elevator, which moves in a hoistway 1, on a wall 1a of which a controller of the elevator is secured, balustrade comprising a fixed structure 15 comprised of a plurality of vertical uprights located at intervals near the edge of the car

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roof 8 and two guard rails fixed at different heights on the uprights, the fixed structure 15 located around at least a portion of the periphery of the car roof 8, and a mobile structure, shown attached to operating platform 5, comprising at least two bars.

6. Kunito is silent concerning a telescopically mounted mobile structure.

7. Roose teaches a mobile structure 72 comprised of at least two bars that are telescopically mounted inside guard rails 90, so as to slide between an open position where the bars are inserted within the guard rails 90 and a closed position where the bars are extended out of the guard rails.

8. It would have been obvious to one of ordinary skill in the art at the time of the invention to position the mobile structure taught by Roose along the edge of the car roof disclosed by Kunito to facilitate further access to a controller or other various kinds of device and members affixed to the wall surface of a hoistway.

9. **Regarding claim 2**, Kunito discloses a bridge 14 comprised of a horizontal plate slidably mounted on the roof 8 of the car between a retracted position in which it is placed completely on the roof 8, and an extended position in which a portion of the bridge 14 protrudes outside of the roof 8 across the space between the car and the wall 1a of the hoistway 1 so as to allow access to the controller mounted in the hoistway.

10. **Regarding claim 4**, Kunito is silent concerning a telescopically mounted mobile structure.

11. Roose teaches bars of the mobile structure being connected at their ends by a vertical crossbar that acts as an abutting element and which allows the mobile structure to be moved integrally.

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12. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a telescopically mounted mobile structure to the guide rails disclosed by Kunito to facilitate further access to a controller or other various kinds of device and members affixed to the wall surface of a hoistway.

13. **Regarding claim 5**, Kunito discloses a mobile structure secured in its retracted position or extended position by means of locking elements 18 inserted through holes 16 and 17.

14. Claim(s) 6 with respect to claims 1, 2, 4, and 5 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunito JP Patent No. 06-032555 in view of Roose U.S. Patent No. 5170746 as applied to claims 1, 2, 4, and 5 above, and further in view of Purvis et al. U.S. Patent No. 5683074.

15. **Regarding claim 6 with respect to claims 1, 2, 4, and 5**, Kunito discloses guard rails and bars 15 having a square section but is silent concerning guard rails and bars made of steel. Purvis et al. teaches guide rails 10 and bars having a square section (Figures 2-9) and made of steel (Column 3, Lines 24-27). It would have been obvious to one of ordinary skill in the art at the time of the invention to make the guard rails and bars disclosed by Kunito from steel taught by Purvis et al. to provide a resilient guide rail structure as well as comply with OSHA strength regulations.

### ***Response to Arguments***

16. Applicant's arguments filed 01/19/2006 have been fully considered but they are not persuasive.

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17. With respect to applicant's argument that it is improper to combine Kunito JP Patent No. 06-032555 with the teachings of Roose U.S. Patent No. 5170746 because Kunito teaches away from the modification of having a slidable bar incorporated into the guide rail. The argument that Kunito teaches away from having a slidable bar incorporated into the guide rail relies upon the assertion that because Kunito teaches having a permanent fixed guide rail around the perimeter of the top of the elevator, Kunito teaches away from having a slidable bar incorporated into the guide rail. This argument is without merit because, while the preferred embodiment of Kunito does show a permanent fixed guide rail around the perimeter of the top of the elevator, a statement indicating the desirability of having a slidable bar incorporated into the guide rail in no way criticizes, discredits, or otherwise discourages the solution claimed. Kunito, therefore, in no way teaches away from having a slidable bar incorporated into the guide rail.

18. Furthermore, applicant does not claim a slidable guide rail so as to create an open space along the guide rail.

19. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have

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been obvious to one of ordinary skill in the art at the time of the invention to position the mobile structure taught by Roose along the edge of the car roof disclosed by Kunito to facilitate further access to a controller or other various kinds of device and members affixed to the wall surface of a hoistway.

20. In response to applicant's argument that Roose U.S. Patent No. 5170746 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Roose is provided to show telescopically mounted guard rails are notoriously old and well known to extend providing additional guarding and retract providing limited guarding.

### ***Conclusion***

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

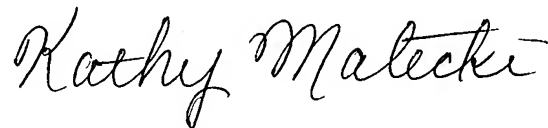
22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Pico whose telephone number is 571-272-5589.

The examiner can normally be reached on 6:30AM - 3:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Matecki can be reached on 571-272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EEP

A handwritten signature in black ink that reads "Kathy Matecki". The signature is written in a cursive, flowing style.

**KATHY MATECKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600**